

## APPENDIX

**Partial list of STATUTES giving discretionary power to the President or head of department to select and appropriate lands for public purposes, or to withdraw lands from entry or sale.**

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By the act of May 3, 1798, the President of the United States, at his discretion, was authorized to make and complete certain fortifications mentioned—

“and to erect fortifications in any other place or places as the public safety shall require, *in the opinion of the President* of the United States; and which other fortifications he is hereby authorized to cause to be erected, under his direction from time to time as he shall judge necessary.”

1 Stat., 554, 555 (1798).

In like manner we find frequent statutory enactments giving a discretion to the President of the United States for the establishing of fortifications, for locating lighthouses, for setting apart saline lands, which at that time were considered very important to be reserved for the public use, and for setting apart Indian reservations (often pursuant to some Indian treaty). Thus the statutes provide:

“That a lighthouse shall be erected near the entrance of the Chesapeake Bay, at such place, when ceded to the United States in

manner aforesaid, as the President of the United States shall direct."

1 Stat., p. 54 (1789).

"That the President reserve to the United States such lands at and near Fort Washington [in the Northwest territory] as *he may think necessary* for the accommodation of a garrison at that fort."

1 Stat., 252 (1792).

"That for the safe keeping of the military stores, there shall be established under the direction of the President of the United States, three or four arsenals with magazines, as he shall judge most expedient, in such places as will best accommodate the different parts of the United States."

1 Stat., 352 (1794).

"That the President of the United States be, and he is hereby authorized \* \* \* to take, by lease, for a term of years, or by sale in fee, to the United States, one or more suitable place or places where cannon or small arms may be advantageously cast and manufactured, and shall and may there establish foundries and armories for the manufacture of the same."

1 Stat., 555 (1798).

An appropriation was made for the establishment of salt works at the springs near the Wabash River—

“under the direction of the President of the United States, who is hereby authorized to cause the said springs to be worked at the expense of the United States.”

2 Stat., 235 (1803).

In the act for making provision for the disposal of public lands in Indiana Territory, it is provided :

“And the several salt springs in said territory, together with as many contiguous sections to each, as shall be deemed necessary by the President of the United States, shall be reserved for the future disposal of the United States.”

2 Stat., 280 (1804).

In the act relating to the adjustment of claims to land in the Territory of New Orleans, in the District of Louisiana, there were excepted from the land subject to sale—

“the salt springs and lands contiguous thereto which by direction of the President of the United States may be reserved for the future disposal of the said states.”

2 Stat., 394 (1806).

In another act it was provided :

“That the several lead mines in the Indiana territory, together with as many sections contiguous to each as shall be deemed necessary by the President of the United States

shall be reserved for the future disposal of the United States."

2 Stat., 449 (1807).

Another act made the following provision:

"That the President of the United States is hereby authorized to cause such of the fortifications heretofore built or commenced, as he may deem necessary, to be repaired or completed, and *such other fortifications and works to be erected* as will afford more effectual protection to our ports and harbors."

2 Stat., 453 (1808).

On June 14, 1809, an appropriation was made—

"for erecting such fortifications as may, *in the opinion of the President* of the United States, be deemed necessary for the protection of the northern and western frontiers."

2 Stat., 547 (1809).

In the act for settling claims to land in the Territory of Missouri, special authority was given to the President to reserve such lands as he may "think proper to reserve for military purposes."

2 Stat., 750 (1812).

So, again, authority is given for the reservation of certain public lands to supply timber for naval purposes, and, after providing for the method of selecting the tracts, it is provided:

"The tracts of land thus selected with the approbation of the President, shall be reserved unless otherwise directed by law, from any future sale of the public lands."

3 Stat., 347 (1817).

In the act to set apart certain lands for the encouragement of the cultivation of the vine and olive, provision was made for the entry of certain lands, with the exception of section 16 in each township—

"and with the further exception of such sections, not exceeding ten in number, *as the president shall designate*, for the purpose of laying out and establishing towns thereon."

3 Stat., 375 (1817).

In an act providing for an exchange of lands with the Indians it was provided:

"That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States west of the river Mississippi not included in any state or organized territory, and to which the Indian title has been extinguished, *as he may judge necessary*, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside and remove there. \* \* \*

4 Stat., 411, 412 (1830).

In an act relating to the States of Illinois and Missouri, and in the territory north of the State of Illinois, after authorizing entries there were certain reservations, including "such reservations as the President shall deem necessary to retain for military purposes."

4 Stat., 687 (1834).

In relation to public lands in Oregon, and for donations to settlers, it was provided:

"That such portions of the public lands as may be designated under the authority of the President of the United States for forts, magazines, arsenals, dock-yards and other needful *public uses*, shall be reserved and excepted from the operation of this act."

9 Stat., 500 (1850).

Relating to lands in the State of Iowa, the President was authorized to cause certain lands to be sold, with the exception of such "tracts as he may select for military or other purposes."

10 Stat., 27 (1852).

In an act relating to Indian affairs it was enacted:

"That the President of the United States  
\* \* \* be and is hereby authorized to make five military reservations from the public domain in the State of California or the territories of Utah and New Mexico, bordering on said state, for Indian purposes."

10 Stat., 238 (1853).

Another enactment provided an appropriation "for the establishment of military posts in the territories of Kansas and Nebraska at such points in said territories as the Secretary of War may designate."

10 Stat., 608 (1855).

In another act relating to the Indians the President was authorized and required to cause to be surveyed the boundaries of lands occupied by certain Indian tribes, and it was further enacted:

"That the President of the United States be and he hereby is authorized and required to set apart the tract or tracts of land aforesaid as a reservation for the confederated bands of Pimas and Maricopas."

11 Stat., 401 (1859).

In an act relating to sale of town sites on public lands it was enacted:

"That it shall be the duty of the President of the United States to reserve from the public lands, whether surveyed or unsurveyed, town sites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population."

12 Stat., 754 (1863).

In an act relating to certain tribes of Indians, and for disposition of lands in Minnesota and Dakota, the President was directed to set apart for certain

tribes a tract of unoccupied land outside of the limits of any state, sufficient in extent to enable him to assign to each member of said bands eighty acres of good agricultural lands.

12 Stat., 819 (1863).

In an act relating to the Indians in California it was provided :

“That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes of Indian reservations.”

13 Stat., 40 (1864).

These various statutes commit to the President or to the head of a department the discretion of making the reservation referred to, and generally the place where the reservation is to be made, as if Congress had made a statutory reservation of the specific tract selected by the President—a principle which is illustrated by the language used in *Wilcox vs. Jackson*, *supra*:

“It would not be doubted, we suppose, by any one, that if Congress had by law directed the trading house to be established and the military post erected, at Fort Dearborn, by name, that this would have been by authority of law. But instead of designating the place themselves they left it to the discretion of the President, which is precisely the same thing in effect.”



In 1888 Congress provided for investigation of the arid region, and for selection of sites for reservoirs by the Geological Survey under the direction of the Secretary of the Interior, and enacted:

"And all the lands which may hereafter be designated or selected by such United States surveys for sites for reservoirs, ditches or canals, etc. \* \* \* are from this time henceforth hereby reserved from sale as the property of the United States."

25 Stat., 526, 527.

In 1891 Congress provided:

"That the President of the United States may, from time to time, set apart and reserve, in any state or territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof."

26 Stat., 1103.

In 1897, referring to the power theretofore given to the President, Congress enacted:

"The President is hereby authorized at any time to modify any executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the

boundary lines of such reserve, or may vacate altogether any order creating such reserve."

30 Stat., 36.

In the Reclamation Act of June 17, 1902, the Secretary of the Interior was directed to—

"withdraw from public entry lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act."

32 Stat., 388.

Even where a temporary withdrawal was to be made, Congress seems to have deemed it necessary to give authority, and, referring to the Carey act, Congress says:

"It shall be lawful for the Secretary of the Interior, upon application by the proper officer of any State or Territory to which said section applies, to withdraw *temporarily* from settlement or entry areas embracing lands for which the State or Territory proposes to make application under said section, pending the investigation and survey preliminary to the filing of the maps and plats and application for segregation by the State or Territory."

And Congress is careful then to make such withdrawal temporary by the following proviso:

"Provided, that if the State or Territory shall not present its application for segregation and maps and plats within *one year* after such temporary withdrawal the lands so withdrawn shall be restored to entry as though such withdrawal had not been made."

36 Stat., 237 (March 15, 1910).

In the act of June 25, 1910, Congress expresses disapproval of executive withdrawals for the purpose of increasing forest reserves, or making new ones, under authority theretofore given for that purpose, for in the act mentioned we have the following clause:

"That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado or Wyoming, *except by act of Congress.*"

36 Stat., 847, 848.

## SECOND APPENDIX

(See Argument, pp. 28-29, *supra*.)

The oil lands in Wyoming were first withdrawn from *agricultural* entry by the Commissioner of the General Land Office on the 10th of November, 1900, and long before any suggestion was made of reserving oil lands for naval purposes. On that date he wrote to the Register and Receiver at Douglas, Wyoming, as follows:

“Register and Receiver,  
Douglas, Wyoming.

Sirs:

I am in receipt of a letter dated Oct. 27th, 1900, from P. M. Shannon, inclosing a petition for the suspension from disposal under the agricultural laws of lands in Townships 38 to 43 N. Range 77 to 80 W., Wyoming.

The petitioners allege a personal knowledge of the lands and believe them to be more valuable for their oil deposits than for any other purpose.

The suspension of the lands from entry is desired, that their character may be investigated and *the mineral lands preserved to the miner and prospector*.

Sufficient reasons therefor being shown, all the public lands in the above townships are hereby temporarily suspended from disposal under the *agricultural* laws. A special

agent will be detailed by this office to make an examination of said lands. Make the proper notations on your records.

This suspension will not interfere with any entries allowed for said lands or with contests involving the same, but you will issue no final certificates upon entries allowed until further instructions.

Very respectfully,

BINGER HERMANN, Commissioner."

It was subsequently discovered that some of the lands intended to be so withdrawn were in the Buffalo land district. The following letter was then sent to the Register and Receiver of that office:

"Nov. 21, 1900.

Register and Receiver,  
Buffalo, Wyoming.

Sirs:

Office letter of November 10, 1900, to the Register and Receiver, Douglas, Wyoming, suspended from agricultural entry, pending an investigation of their alleged oil character, lands in townships 38 to 43 N., ranges 77 to 80 W. I find that of said lands, Twns. 41 to 43 N rs. 77 to 80 fall within the limits of your district. You will make the proper notations on your records.

As stated in said office letter, said suspension will not interfere with any entries allowed for said lands or with entries involving the same, but will prevent the issuance of

final certificates upon such entries until further instructions.

Respectfully,

BINGER HERMANN, Commissioner."

The lands were examined by special agents, and on September 27, 1901, a letter was written to the Register and Receiver at Douglas, Wyoming, which, after reciting the history of the withdrawal, concludes:

"The reports of the agents and the evidence accompanying the same have been carefully examined and without going into the matter in detail it would appear sufficient to say that the following townships appear to contain oil in paying quantities, or such evidences of the existence of oil as would justify the suspension of the same from present disposition under the *agricultural* land laws that opportunity may be given to develop the same as mineral, viz.:

Twp.	R.
31 N	81 W.
32 N	81, 82, 83, 86 W.
33 N	81, 82, 83, 85, 87, 88, 89, 90 W.
34 N	87, 88, 89, 90 W.
38 N	77, 78, 79 and 80 W.
39 N	77, 78, 79 and 80 W.
40 N	77, 78, 79, 80 and 81 W.
41 N	77, 78, 79, 80, 81 and 82 W.
42 N	77, 78, 79, 81, 82 W.

The townships above described are accordingly hereby suspended from *agricul-*

*tural* entry. The suspension of township No. 42 N, ranges 77 to 80 W. is revoked.

\* \* \* \* \*

Very respectfully,

W. A. RICHARDS, Assistant Commissioner."

The situation was unchanged until April 1, 1903, when the following letter was sent to the Register and Receiver at Douglas, Wyoming:

"April 1st, 1903.

Register and Receiver,  
Douglas, Wyoming.

Sirs:

By office letter of September 27th, 1901, addressed to you, certain lands in your district and in the Buffalo, Wy. land district, were suspended from present disposition under the agricultural land laws, *that opportunity might be given to develop the same as mineral*, it appearing that said lands contain oil in paying quantities or such evidences of the existence of oil as would justify the action taken.

The lands so suspended are described as follows:

[Description same as in letter of September 27, 1901.]

It would appear that ample opportunity has been afforded mineral claimants to explore and develop the land in question and that the public interests would be promoted by the removal of the order of suspension from such lands as now appear to be non-

mineral in character. Accordingly the suspension of September 27th, 1901 is revoked except as to the following described lands :

Secs. 25-56 inclusive of T. 42 N. R. 78 W.

Secs. 25 to 36 inclusive of T. 42 N. R. 79 W.

All of Twps. 41 N. Ranges 78 and 79 W.

All of Twps. 40 N. Ranges 78 and 79 W.

Sections 1, 12, 13, 24, 25, 36, Twp. 40 N. R. 80 W.

All townships 39 N. Ranges 78 and 79 W.

Secs. 1, 2, 11, 12, 13, 14, 23, 25, 26, 35 and 36 T. 39 N.

Secs. 1 to 6 inclusive T. 38 N. R. 78 W.

Sections 1 to 6 inclusive, T. 38 N. R. 79 W.

Sections 1 and 2 inclusive T. 38 N. R. 80 W.

You will note the action on your records.

Respectfully,

W. A. RICHARDS, Commissioner."

Apparently no further official action was taken until in July, 1909, when the following letter was written to the Secretary of the Interior by the Acting Commissioner of the General Land Office :

"July 23, 1909.

The Honorable Secretary of the Interior.

Sir :

I have the honor to submit herewith a report with accompanying diagrams, by Mineral Inspector Thos. S. Harrison, and approved by Chief of Field Division, of an ex-



amination of certain townships in Wyoming, which were withdrawn from agricultural entry by office letters N. of April 1, 1903, to the local offices at Douglas and Buffalo, Wyoming, *in order that parties might have opportunity to develop the land for alleged oil deposits.*

The lands included in said withdrawal are described as follows:

[Description as per letter of April 1, 1903.]

In view of the report of Mineral Inspector Harrison, it is recommended that the suspension be continued pending examination and classification as to the mineral (oil) character of the lands by the U. S. Geological Survey.

Very respectfully,

S. V. PROUDFIT, Acting Commissioner."

"Approved *July 26, 1909.*

FRANK PIERCE,

Acting Secretary."

